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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (HONORABLE JOHN A. HOUSTON)

11 UNITED STATES OF AMERICA,) CASE NO.: 07CR3190-JAH
12)
13 Plaintiff,) DATE: May 13, 2008
14 v.) TIME: 9:00 a.m.
15) **DEFENDANT'S PROPOSED JURY**
16 **JOSE RAYMUNDO CONTRERAS-**) **INSTRUCTIONS**
17 **HERNANDEZ,**)
18 Defendant.)

19 TO: KAREN P. HEWITT, UNITED STATES ATTORNEY,
20 PETER MAZZA, ASSISTANT UNITED STATES ATTORNEY:

21 Jose Raymundo Contreras-Hernandez, by and through counsel, Candis Mitchell, and the
22 Federal Defenders of San Diego, Inc., pursuant to Federal Rule of Criminal Procedure 30, requests the Court
23 instruct the jury on the law as set forth herein.

24 Respectfully submitted,

25 Dated: March 29, 2008

s/ Candis Mitchell
CANDIS MITCHELL
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Contreras-Hernandez
Candis_Mitchell@fd.org

**DEFENDANT'S PROPOSED INSTRUCTIONS FROM THE
9TH CIRCUIT MANUAL OF MODEL JURY INSTRUCTIONS CRIMINAL (2003)**

- 9th Cir. Crim. Jury Instr. 1.1 (2003) ("Duty of Jury")
- 9th Cir. Crim. Jury Instr. 1.3 (2003) ("What Is Evidence")
- 9th Cir. Crim. Jury Instr. 1.4 (2003) ("What Is Not Evidence")
- 9th Cir. Crim. Jury Instr. 1.5 (2003) ("Evidence For a Limited Purpose")
- 9th Cir. Crim. Jury Instr. 1.7 (2003) ("Ruling On Objections")
- 9th Cir. Crim. Jury Instr. 1.8 (2003) ("Credibility of Witnesses")
- 9th Cir. Crim. Jury Instr. 1.9 (2003) ("Conduct of the Jury")
- 9th Cir. Crim. Jury Instr. 1.10 (2003) ("No Transcript Available to the Jury")
- 9th Cir. Crim. Jury Instr. 1.11 (2003) ("Taking Notes")
- 9th Cir. Crim. Jury Instr. 1.12 (2003) ("Outline of Trial")
- 9th Cir. Crim. Jury Instr. 1.13 (2003) ("Jury to Be Guided By Official English Interpretation")
- 9th Cir. Crim. Jury Instr. 2.4 (2003) ("Stipulations of Fact") (if appropriate).
- 9th Cir. Crim. Jury Instr. 2.9 (2003) ("Foreign Language Testimony") (if appropriate).
- 9th Cir. Crim. Jury Instr. 2.10 (2003) ("Other Crimes, Wrongs or Acts of Defendant") (if appropriate).
- 9th Cir. Crim. Jury Instr. 3.2 (2003) ("Charge Against Defendant Not Evidence - Presumption of Innocence - Burden of Proof").
- 9th Cir. Crim. Jury Instr. 3.3 (2003) ("Defendant's Decision Not to Testify") (if appropriate).
- 9th Cir. Crim. Jury Instr. 3.4 (2003) ("Defendant's Decision to Testify") (if appropriate).
- 9th Cir. Crim. Jury Instr. 3.5 (2003) ("Reasonable Doubt - Defined")
- 9th Cir. Crim. Jury Instr. 3.6 (2003) ("What is Evidence")
- 9th Cir. Crim. Jury Instr. 3.7 (2003) ("What is Not Evidence")
- 9th Cir. Crim. Jury Instr. 3.9 (2003) ("Credibility of Witnesses").
- 9th Cir. Crim. Jury Instr. 3.11 (2003) ("Activities not Charged").
- 9th Cir. Crim. Jury Instr. 3.20 (2003) ("Jury to be Guided by Official English Translation/Interpretation") (if appropriate).
- 9th Cir. Crim. Jury Instr. 4.1 (2003) ("Statements by Defendant") (if appropriate).

1 9th Cir. Crim. Jury Instr. 7.1 (2003) ("Duty to Deliberate")

2 9th Cir. Crim. Jury Instr. 7.2 (2003) ("Consideration of Evidence")

3 9th Cir. Crim. Jury Instr. 7.3 (2003) ("Use of Notes")

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1 COURT'S INSTRUCTION NO. _____

2 DEFENDANT'S PROPOSED INSTRUCTION NO. 1

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4 Mr. Contreras-Hernandez is charged in the indictment with being an alien who, after
5 deportation, was found in United States in violation of Section 1326(a) of Title 8 of the United States Code.
6 In order for Mr. Contreras-Hernandez to be found guilty of that charge, the government must prove each of
7 the following elements beyond a reasonable doubt:

8 First, Mr. Contreras-Hernandez was deported from the United States;

9 Second, after deportation Mr. Contreras-Hernandez voluntarily entered the United States;

10 Third, when Mr. Contreras-Hernandez entered he knew he was entering the United States;

11 Fourth, Mr. Contreras-Hernandez was found in the United States without having obtained the
12 consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for
13 admission into the United States, and

14 Fifth, Mr. Contreras-Hernandez was an alien at the time of his entry into the United States.

15 An alien is a person who is not a natural-born or naturalized citizen [or a national] of the
16 United States.

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18 Authority

19 See Ninth Cir. Model Jury Instr. 9.5B (Approved 1/2007)

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26 GIVEN _____

27 GIVEN AS MODIFIED _____

28 REFUSED _____

1 COURT'S INSTRUCTION NO. _____

2 DEFENDANT'S PROPOSED INSTRUCTION NO. 2

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4 This is a criminal case brought by the United States government. The government charges the
5 defendant with [*crimes charged*]. The charges against Mr. Contreras-Hernandez are contained in the
6 indictment. The indictment is simply the description of the charges made by the government against the
7 defendant; it is not evidence of anything.

8 In order to help you follow the evidence, I will now give you a brief summary of the elements
9 of the crimes which the government must prove to make its case: [*supply brief statement of elements of*
10 *crime[s]*]. These instructions are preliminary and the instructions I will give at the end of the case will control.

11 Mr. Contreras-Hernandez has pleaded not guilty to the charge and is presumed innocent. The
12 presumption of innocence applies throughout trial and into jury deliberations. The presumption of innocence
13 may only be overcome upon your determination after the close of evidence, during deliberations, that the
14 government has proven each element of the charged offenses beyond a reasonable doubt.

15 Authority

16 9th Cir. Crim. Jury Instr. 1.2 (2003 ed.) (modified). United States v. Cummings, 468 F.2d 274, 280
17 (9th Cir. 1972)("Both the presumption [of innocence] and the [proof beyond a reasonable doubt]
burden remain throughout the trial and go with the jury when it deliberates."); United States v.
18 Perlaza, 439 F.3d 1149, 1171-72 (9th Cir. 2006)(instruction "flawed" in part because "[i]t did not
specify that the presumption of innocence 'go[es] with the jury when it deliberates.'")

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1 COURT'S INSTRUCTION NO. _____

2 DEFENDANT'S PROPOSED INSTRUCTION NO. 3

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4 Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant
5 is guilty. It is not required that the government prove guilt beyond all possible doubt.

6 A reasonable doubt is based on the legal principle that the defendant is presumed innocent.
7 Thus, reasonable doubt may be based solely on the government's failure to present evidence that leaves you
8 firmly convinced that the defendant is guilty.

9 If after a careful and impartial consideration of all the evidence, you are not convinced beyond
10 a reasonable doubt that the defendant is guilty beyond a reasonable doubt, it is your duty to find the defendant
11 not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are
12 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

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14 Authority

15 9th Cir. Crim. Jury Instr. 3.2 (2003 ed.) (modified). See In re Winship, 397 U.S. 358, 364 (1970)
16 (the prosecution has to prove every element of the charged crime beyond a reasonable doubt); and
17 Mullaney v. Wilbur, 421 U.S. 684 (1975) (same). See United States v. Andrews, 75 F.3d 552, 556
(9th Cir. 1996) ("mere suspicion or speculation will not provide sufficient evidence" to convict).

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27 GIVEN AS MODIFIED _____

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1 COURT'S INSTRUCTION NO. _____

2 DEFENDANT'S PROPOSED INSTRUCTION NO. 4

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4 A finding of guilt as to any crime may not be based on circumstantial evidence unless the
5 proved circumstances are not only (1) consistent with the theory that Mr. Contreras-Hernandez is guilty of the
6 crime, but (2) cannot be reconciled with any other rational conclusion.

7 Further, each fact which is essential to complete a set of circumstances necessary to establish
8 Mr. Contreras-Hernandez's guilt must be proved beyond a reasonable doubt. In other words, before an
9 inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact
10 or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

11 Also, if the circumstantial evidence as to any particular count permits two reasonable
12 interpretations, one of which points to Mr. Contreras-Hernandez's guilt and the other to his innocence, you
13 must adopt that interpretation that points to Mr. Contreras-Hernandez's innocence, and reject that interpretation
14 that points to his guilt.

15 If, on the other hand, one interpretation of this evidence appears to you to be reasonable and
16 the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the
17 unreasonable.

18 Authority

19 1 Cal. Jury Instr.--Crim. 2.01 (7th ed. 2003) (Sufficiency of Circumstantial
20 Evidence--Generally) (modified).

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26 GIVEN _____

27 GIVEN AS MODIFIED _____

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